

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 08, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LOGAN SHARPE,

Plaintiff,

v.

UNITED STATES FEDERAL
HIGHWAY ADMINISTRATION,

Defendant.

NO. 2:24-CV-0045-TOR

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

BEFORE THE COURT is Defendant's Motion to Dismiss (ECF No. 6).

This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Defendant's Motion to Dismiss (ECF No. 6) is GRANTED.

BACKGROUND

This matter arises out of a Freedom of Information Act ("FOIA") request propounded on the Defendant, the United States Federal Highway Administration ("FHWA") by Plaintiff. FHWA represents that Plaintiff made several separate

1 requests for correspondence production. The first was September 5, 2023, in
2 which Plaintiff submitted a FOIA request to FHWA employee Christopher
3 Richardson seeking “[a]ll emails, texts, Teams, or Zoom messages and any and all
4 other written communications between [Mr. Richardson] and . . . (1) Nicolle
5 Fleury (2) Rayann Speakman, and (3) Jack Gilbert,” from January 2022 until
6 present. ECF No. 1 at 8. On September 6, 2023, Plaintiff requested from FHWA
7 employee Rayann Speakman all the emails, Microsoft Teams messages, cellphone
8 text messages, and audio or video recordings she had created from January 2022
9 until present. *Id.* On September 7, 2023, the FHWA FOIA office informed
10 Plaintiff that the emails he sent to Mr. Richardson and Ms. Speakman did not
11 constitute proper requests. *Id.* at 9. After several additional exchanges, Plaintiff’s
12 final clarification, sent on October 23, 2023, was for “all emails and Microsoft
13 Teams messages between Christopher Richardson and Nicolle Fleury from January
14 1, 2022, until present.” *Id.* at 6. On December 6, 2023, Defendant responded to
15 Plaintiff’s request to appeal the decision that the email exchanges did not constitute
16 proper FOIA requests. *Id.* at 8. Defendant explained that the request was still
17 impermissibly untenable for FHWA to process, and Plaintiff’s keywords including
18 “dot.gov” did not provide any clarification given that the agency is made up of
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1 55,000 employees who all carry the same domain.¹ *Id.* at 9. Therefore, Plaintiff
2 was unable to appeal the decision because Defendant had not yet accepted his
3 emails as a valid FOIA request. *Id.*

4 Plaintiff seeks injunctive relief, requesting the Court decide his October 23,
5 2023, email constitutes a valid FOIA request. *Id.* at 4. Defendant filed a motion to
6 dismiss, arguing that Plaintiff is not entitled to relief because he has yet to send a
7 proper FOIA request. ECF No. 6. Plaintiff responded, stating he has a valid FOIA
8 request because his emails reasonably described the records sought. ECF No. 7.

9 DISCUSSION

10 Defendant filed a Federal Rule of Civil Procedure 12(b)(6) motion to
11 dismiss for failure to state a claim upon which relief can be granted. A Rule
12 12(b)(6) motion will be denied if the plaintiff alleges “sufficient factual matter,
13 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
14 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
15 570 (2007)). While the plaintiff’s “allegations of material fact are taken as true
16 and construed in the light most favorable to the plaintiff” the plaintiff cannot rely
17 on “conclusory allegations of law and unwarranted inferences ... to defeat a

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19 ¹ Defendant also including another keyword, either “a” or “@,” but the Court is
20 unable to discern which given the grainy nature of the document.

1 motion to dismiss for failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d
2 1399, 1403 (9th Cir. 1996) (citation and brackets omitted). That is, the plaintiff
3 must provide “more than labels and conclusions, and a formulaic recitation of the
4 elements.” *Twombly*, 550 U.S. at 555. Instead, a plaintiff must show “factual
5 content that allows the court to draw the reasonable inference that the defendant is
6 liable for the alleged misconduct.” *Iqbal*, 556 U.S. 662. A district court is
7 permitted to consider materials attached to the complaint when deciding a motion
8 to dismiss without converting it into a motion for summary judgment. *United*
9 *States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (internal citations omitted).

10 Congress enacted FOIA “to pierce the veil of administrative scrutiny and to
11 open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425
12 U.S. 352, 361 (1976). When an agency receives a request for records eligible for
13 disclosure that “reasonably describes” what is sought, the agency is required to
14 provide the records. 5 U.S.C. § 552(a)(3)(A). A request is sufficient in reasonably
15 describing the records sought when it “enable[s] a professional employee of the
16 agency who was familiar with the subject area of the request to locate the record
17 with a reasonable amount of effort.” *Marks v. U.S. (Dep’t of Just.)*, 578 F.2d 261,
18 263 (9th Cir. 1978) (internal citations omitted). Further, an agency need only
19 make “reasonable efforts” to search for electronic records. 5 U.S.C. §
20 552(a)(3)(C). While FOIA favors disclosure, broad sweeping requests lacking

1 specificity are not permitted. *Yagman v. Pompeo*, 868 F.3d 1075, 1081 (9th Cir.
2 2017); *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002); *see also Inst. for Just.*
3 *v. Internal Revenue Serv.*, 941 F.3d 567, 570 (D.C. Cir. 2019) (“FOIA requires
4 agencies to disclose all non-exempt data points . . . subject, as always, to limits
5 aimed at protecting agencies from undue burdens.”). Included in this calculus of
6 reasonableness is the post-search burden placed upon the agency to sift through
7 materials, and courts have held that overbroad or vague requests that bury agencies
8 are not reasonable.² *Ctr. for Immigr. Stud. v. U.S. Citizenship & Immigr. Servs.*,
9 628 F. Supp. 3d 266, 272 (D.D.C. 2022); *Yagman*, 868 F.3d at 1081 (“Here,
10 Defendants would need to engage in quite a bit of guesswork to execute Yagman's
11 request. His request does not identify specific persons, much less specific
12 documents, types of documents, or types of information.”); *cf. Shapiro v. Cent.*
13 *Intel. Agency*, 170 F. Supp. 3d 147, 154 (D.D.C. 2016) (holding that a search for
14 all documents mentioning Nelson Mandela, involved virtually no guesswork, and
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16 ² However, just because a request would produce a great deal of documents does
17 not make it *per se* unreasonable. *See Yagman*, 868 F.3d 1075, 1081 n. 6 (9th Cir.
18 2017) (quoting *Yeager v. DEA*, 678 F.2d 315, 326 (D.C. Cir. 1982) (“[T]he number
19 of records requested appears to be irrelevant to the determination whether they
20 have been ‘reasonably described.’”).

1 therefore the subject matter of the search was reasonably described).

2 Plaintiff asserts that he is not seeking *all* documents concerning a particular
3 subject, but therein lies the problem. ECF No. 7 at 4. His FOIA request is flawed
4 because it lacks any limiting subject matter and cannot be said to “reasonably
5 describe” the information sought. Plaintiff insists that his request is focused in
6 nature, because he narrowed the scope of the search to emails and Microsoft
7 Teams messages exchanged between two employees within nearly two-year
8 period. *Id.* However, it still unclear what general subject matter Plaintiff hopes to
9 uncover from this request, and Defendant informed him that as stated, his request
10 does not particularize the search as 55,000 employees utilize the “dot.gov” domain.
11 ECF No. 1 at 9. Plaintiff could have solved this problem by providing FHWA with
12 a general idea of what he was searching for and was invited to do so. *Yeager v.*
13 *Drug Enf’t Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982) (“It is clear in this case that
14 the DEA knew ‘precisely’ which of its records had been requested and the nature
15 of the information sought from those records.”); ECF No. 1 at 9. He declined to do
16 so, and instead chose to litigate. *Id.* at 6.

17 To place a finer point, the request is not unduly burdensome because it will
18 require a detailed search of the records, but because it creates a burden on
19 Defendant to comb through documents that may not ultimately be responsive to
20 whatever Plaintiff’s desired research point may be. *Ctr. for Immigr. Stud.*, 628 F.

1 Supp. at 273 (“Workplace emails include conversations between coworkers about
2 miscellaneous topics and missives from the employer about topics unrelated to
3 official business, like canned food drives and health care plans. The Center's
4 requests sweep in all those communications, despite their irrelevance to
5 immigration, forcing the agency into years of work.”). FOIA was not designed to
6 provide the requester with an “all-encompassing fishing expedition of files in every
7 office within an agency.” *Cause of Action Inst. v. IRS*, 253 F. Supp. 3d 149, 160
8 (D.D.C. 2017). While Plaintiff’s request cannot be characterized as searching for
9 “every file within an agency” as he has limited the individuals and timeframe
10 regarding the records he is seeking, his request is still incredibly broad, and he
11 provides no narrowing agent with which Defendant can use to conduct a search.
12 This is not to suggest that Plaintiff must express exactly what he is looking for, but
13 providing the agency with the ability to focus the scope in order to produce a more
14 fruitful search would be a proper FOIA request. *Ctr. for Immigr. Stud.*, 628 F.
15 Supp. 3d at 272 (“Agencies respond to FOIA requests at taxpayer expense, and
16 burdensome requests hinder an agency's ability to respond to other FOIA requests
17 and to conduct its other statutory responsibilities.”). The Court finds that
18 Plaintiff’s email is impermissibly vague, and therefore does not constitute a proper
19 FOIA request.

20 Plaintiff also faults Defendant for replying on December 6, 2023, to an

1 October 23, 2023, email sent at 7:02 p.m. and an October 25, 2023, request, sent at
2 an unknown time. ECF No. 1 at 3, 6. He contends that this response is outside of
3 the statutorily mandated thirty business day period. 5 U.S.C. § 552(a)(6)(A)(i),
4 (a)(6)(B). By the Court's calculation, including Veterans Day which was federally
5 recognized on Friday, November 10, 2023, and Thanksgiving Day on November
6 23, 2023, Defendant's response was within the thirty business days period, and
7 therefore timely.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

9 1. Defendant's Motion to Dismiss (ECF No. 6) is **GRANTED**. Plaintiff's

10 Complaint is dismissed without prejudice.

11 2. Any pending motions are **DENIED** as moot.

12 The District Court Executive is directed to enter this Order, furnish copies to
13 counsel, and **CLOSE** the file.

14 DATED May 8, 2024.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge